

New Registration Procedures for Public Works Contractors

On June 20, 2014, SB 854 was signed into law, establishing a new registration program for public works contractors, and altering certain requirements for public entities awarding contracts on public works projects.

Contractor and Subcontractor Requirements

The new program requires all contractors and subcontractors that intend to bid or perform work on public works projects to pay a registration and annual renewal fee of \$300. This fee is not tied to a particular project or award, but rather acts more like a license, merely enabling the registrant to bid on and perform public works.

In order to be registered as eligible to bid on public works projects, each contractor and subcontractor must also:

- Have workers' compensation coverage for any employees and only use subcontractors who are registered public works contractors;
- Have a Contractors State License Board (CSLB) license;
- Have no delinquent unpaid wage or penalty assessments owed to any employee or enforcement agency;
- Not be under federal or state debarment;
- Not be in prior violation of this registration requirement once it becomes effective. However, for the first violation in a 12 month period, a contractor may still qualify for registration by paying an additional penalty.

In order to ensure compliance with the new program, the Department of Industrial Relations (DIR) will post a list of registered contractors and subcontractors on its website. Furthermore, the law includes safeguards to ensure that A) contractors are not in violation for working on a private job that is later determined to be a public job, B) a bid is not necessarily invalidated by an inadvertent listing of an unregistered contractor or subcontractor, C) contracts with unregistered

contractors or subcontractors are subject to cancellation, but not void as to past work, D) an unregistered contractor or subcontractor can be replaced with one who is registered, and E) a contractor whose registration lapses will have a 90-day grace period within which to pay a late fee and renew.

The new program includes several phased-in requirements. Beginning March 1, 2015, all bids are required to list only registered contractors and subcontractors. All public works projects awarded on or after April 1, 2015, are required to use only registered contractors and subcontractors on such projects. Lastly, all contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner. This requirement will be enforced according to the following schedule:

- **June 20, 2014:** All contractors on projects that were being monitored by the CMU/Labor Commissioner prior to the adoption of SB 854 must continue to furnish certified payroll records to the Labor Commissioner until the project is complete.
- **April 1, 2015:** For all new projects awarded on or after this date, the contractors and subcontractors must furnish electronic certified payroll records to the Labor Commissioner.
- **Anytime:** For projects besides those listed above, the Labor Commissioner may at any time require the contractors and subcontractors to furnish electronic certified payroll records. This may be especially prevalent for green energy school projects that receive Proposition 39 funding.
- **January 1, 2016:** The requirement to furnish electronic certified payroll records to the Labor Commissioner will apply to all public works projects, whether new or ongoing.

One prominent exception to the electronic certified payroll reporting requirement, which the Labor Commissioner may exercise at his or her discretion, would excuse contractors and subcontractors on projects either A) under the jurisdiction of one of the four legacy DIR-approved labor compliance programs (Caltrans, City of Los Angeles, Los Angeles Unified School District, and County of Sacramento) or B) that are covered by a qualifying project labor agreement from the listed reporting requirements.

Awarding Body Requirements

SB 854 also changes certain requirements for public entities awarding construction contracts on public works projects, some of which went into effect immediately, and others of which will be phased in. As of the date of the bill's enactment, awarding bodies have a duty to notify DIR when awarding a contract for any public works project using the online PWC-100 form (found here: <https://www.dir.ca.gov/pwc100ext/>). In addition, awarding bodies are no longer obligated to pay DIR for compliance monitoring on state bond-funded projects and other projects that

required the use of DIR's Compliance Monitoring Unit. The DIR will continue such monitoring, but it will not charge the public entities for any services provided.

The phased-in requirements for contractors and subcontractors listed above have corresponding requirements for awarding bodies as well. Beginning March 1, 2015, an awarding body may not accept a bid from an unregistered contractor. And beginning April 1, 2015, an awarding body may not enter into a contract with an unregistered contractor. Certain exceptions to the registration requirement may apply, such as where a CSLB license would not be required at the time of bidding, or instances in which a party may have the ability to cure violations through the payment of penalty fees.

In addition, the bill requires the awarding party to put bidding parties on notice of the aforementioned requirements. As of January 1, 2015, all calls for bids and contract documents must include the following information:

- No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Further information regarding the new registration program, as well as link to the online registration application and a searchable project database, can be found here:

<http://www.dir.ca.gov/Public-Works/PublicWorks.html>

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